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MOORE *v.* HARRISON.

Jan. 16, 1913.

[76 S. E. 920.]

1. Exceptions, Bill of (§ 43*)—Time for Signing.—Act March 13, 1912 (Acts of 1912, c. 238), providing that when the Court of Appeals shall be of the opinion that any record or part thereof, testimony, or proceeding has not been properly identified or certified so as to make it a part of the record and bring it properly before the court, and that justice may be done by directing the trial court to cure the defects in the record, it shall so order, and, when they have been cured, proceed with the hearing on the merits, does not apply to bills of exception not presented to and signed by the trial judge within the time allowed by statute.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. § 72½; Dec. Dig. § 43.* 5 Va.-W. Va. Enc. Dig. 387; 14 Va.-W. Va. Enc. Dig. 421; 15 Va.-W. Va. Enc. Dig. 363.]

2. Exceptions, Bill of (§ 40*)—Time for Signing.—Under Code 1904, § 3385, as amended by Act March 12, 1908 (Acts of 1908, c. 225), providing that bills of exception may be signed during the term at which the opinion of the court to which exception is taken is announced, or within 30 days after the end of such term, or at such other time as the parties by consent entered of record may agree upon, the court cannot, after the adjournment of a term at which final judgment was entered, enter consent orders extending the time for signing such bills, since the consent of the parties that the bill may be signed after the time provided must be entered of record as a part of the final order in the cause.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. §§ 44, 45, 57-64; Dec. Dig. § 40.* 5 Va.-W. Va. Enc. Dig. 387; 14 Va.-W. Va. Enc. Dig. 421; 15 Va.-W. Va. Enc. Dig. 363.]

3. Exceptions, Bill of (§ 32*)—Time for Signing.—The power of a judge to sign bills of exceptions is derived from and measured by the statute, and can be exercised only in accordance with its provisions.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. §§ 37-41, 71; Dec. Dig. § 32;* Judges, Cent. Dig. §§ 98, 103, 122, 144, 149, 157, 162. 5 Va.-W. Va. Enc. Dig. 387; 14 Va.-W. Va. Enc. Dig. 421; 15 Va.-W. Va. Enc. Dig. 363.]

4. Appeal and Error (§ 554*)—Effect of Failure to Make Bill of Exceptions.—Where all the assignments of error are based upon bills of exception not properly in the record, there are no errors assigned within Code 1904, § 3464, requiring the petition for a writ of error to assign errors, and the writ of error, having been improvidently awarded, will be dismissed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2472-2479; Dec. Dig. § 554.*]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Circuit Court, New Kent County.

Action by C. A. Moore against C. L. Harrison. Judgment for defendant, and plaintiff brings error. Writ of error dismissed.

Haw & Haw, of Richmond, for plaintiff in error.

L. O. Wendenburg, of Richmond, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* JOHNSON.

Jan. 16, 1913.

[76 S. E. 916.]

1. Street Railroads (§ 114*)—Action for Injuries—Sufficiency of Evidence—Contributory Negligence.—Evidence in an action for personal injuries from a collision between plaintiff's buggy and defendants' car at a crossing held to show that the plaintiff, who was driving with a top buggy and a loose rein, without looking for an approaching car until the point of collision was reached, was negligent.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 239-250; Dec. Dig. § 114.* 4 Va.-W. Va. Enc. Dig. 135; 14 Va.-W. Va. Enc. Dig. 294; 15 Va.-W. Va. Enc. Dig. 245.]

2. Street Railroads (§ 114*)—Action for Injuries—Sufficiency of Evidence.—Evidence in an action against a street railroad for injuries to plaintiff from the collision of defendants' car with his buggy at a street crossing, where each was visible to the other from a distance of 75 or 100 feet, held to show that the motorman was negligent in not keeping proper lookout for travelers.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 239-250; Dec. Dig. § 114.* 4 Va.-W. Va. Enc. Dig. 129.]

3. Street Railroads (§ 102*)—Action for Injuries—Proximate Cause—Concurrent Negligence.—Plaintiff whose negligence concurred with that of defendants' motorman as the proximate cause of a collision at a street crossing could not recover.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 186, 194, 200, 203; Dec. Dig. § 102.* 10 Va.-W. Va. Enc. Dig. 380; 14 Va.-W. Va. Enc. Dig. 767; 15 Va.-W. Va. Enc. Dig. 724.]

Error to Law and Equity Court of City of Richmond.

Action by W. I. Johnson against the Virginia Railway & Power Company. From an order of ruling a demurrer to the evidence and rendering judgment against defendant for the damages provisionally assessed by the jury, defendant brings error. Reversed and judgment rendered for defendant.

H. W. Anderson, *A. B. Guigon*, and *Thos. P. Bryan*, all of Richmond, for plaintiff in error.

J. R. Pollard and *L. O. Wendenburg*, both of Richmond, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.